

1 deficits.

2 Q Well, in what context were the low-power  
3 construction permits listed as exhibits to the financing  
4 agreement?

5 A There are volumes of exhibits attached to these loan  
6 agreements that have to do with leases, franchises, vehicle  
7 loans, other indebtedness of the company. And in that we  
8 listed -- we were requested to list -- In addition to all --  
9 attachment agreements and all other things, we were required  
10 to list all FCC licenses. And in that listing we listed the  
11 CP's that we held at the time of the closing, which were the  
12 four CP's in addition to the TV-40 operating --

13 Q Well, did the agreement place restrictions on, on,  
14 on the low-power television permits?

15 A Are we talking about in drafts or are we talking  
16 about the final agreement?

17 Q Well, I'm talking about, I'm talking about both.  
18 You testified that there are a large volume of documents that,  
19 that list various assets, I guess you'd call them, including  
20 the low-power permits. Let me phrase it to ask you then is  
21 that -- is such a listing included in the, in the final  
22 agreement, July 31, 1992, agreement?

23 A It's included as a part of the closing package.  
24 It's not included as a part of the agreement.

25 Q Well, then my question -- I'd ask my question again.

1 Are there -- Does the agreement place any restrictions on  
2 those low-power permits?

3 A And by agreement, are we talking about the final  
4 loan agreement or all the drafts?

5 Q Well, the final agreement.

6 MR. SCHAUBLE: Are we, are we also talking about  
7 restrictions other than those that have been previously  
8 mentioned in the witness's testimony?

9 JUDGE CHACHKIN: Well, we're talking about  
10 restrictions as far as use of the proceeds in connection with  
11 the low-power stations, CP stations.

12 MR. SANDIFER: The only note of which I'm aware in  
13 the final agreement, Exhibit 264, is on page 20 where it talks  
14 about the company may, in Section B, transfer lease, assign or  
15 otherwise dispose of any assets other than the assets  
16 constituting TV-40 or any of the low-power television  
17 construction permits -- referred to on Schedule 4.15 hereto or  
18 an affiliate. That is, to my knowledge, the, the extent of  
19 specific discussion of the construction permits in the loan  
20 agreement between Raystay Company and Greyhound Financial  
21 Corp. dated July the 31st, 1992.

22 BY MR. EMMONS:

23 Q Now, back to the June 1992 draft, do you know  
24 whether George Gardner reviewed that draft?

25 A He did not.

1 Q You did not give it to him for review?

2 A I did not.

3 Q Did you discuss with him the restrictions contained  
4 in the draft on use of monies to develop the five -- the low-  
5 power construction permits?

6 A I have discussed it with him. Which period or --

7 Q No, did you discuss it with him in the period of  
8 June or July 1992, those restrictions?

9 A Prior to the signing of all the documents, I  
10 prepared a multi-page summary for the shareholders. We had a  
11 shareholders meeting. And in that multi-page summary, I, I  
12 mentioned there was a summary of the covenants and it had to  
13 do with the, with the TV-40 operation. So I don't know  
14 whether we had specific conversations regarding the low-power  
15 construction permits prior to the signing of this document on  
16 July 31st, 1992.

17 Q Now, would you turn to TBF Exhibit 264, please?

18 A Yes.

19 Q And what this is is a -- what we're calling the  
20 final -- the agreement dated July 31, 1992, as reflected by  
21 the first page of the exhibit. And my first question is did  
22 you sign this document on behalf of Raystay Company?

23 A Yes, I did.

24 Q All right. And Matthew Breyne signed it on behalf  
25 of Greyhound?

1 A Yes.

2 Q Okay. Now, would you turn to page 12 of the  
3 exhibit? Section 2.7, "Use of Proceeds". Do you see that?

4 A Yes.

5 Q Would you agree that that is the same language at  
6 Section 2.7 as appeared in the June 1992 draft?

7 MR. SCHAUBLE: Your Honor, objection. The document  
8 will speak for itself.

9 JUDGE CHACHKIN: Well, overrule, unless you want to  
10 stipulate that it's the same.

11 MR. SANDIFER: Yes.

12 BY MR. EMMONS:

13 Q And would you -- excuse me, turn to page 14 of the  
14 exhibit, Section 8.7? And do you see in the, in the -- about  
15 the middle of that paragraph and in parentheses the reference  
16 to the assets constituting TV-40?

17 A Yes.

18 Q And do you agree that that is the same provision  
19 allowing the sale of TV-40 as appeared in the June 1992 draft?

20 A Yes.

21 Q And would you turn to page 17 of the exhibit,  
22 carrying over to page 18, Section 8.13 entitled "Capital  
23 Expenditures"? And my question to you is do you agree that  
24 that is the same prohibition as appeared in the June 1992  
25 draft prohibiting capital expenditures for development of the

1 new low-power construction permits?

2 A As it pertains to the low-power construction  
3 permits, that's correct.

4 Q All right. And would you turn to page 19 of the  
5 exhibit, please? This is Section 8.15 entitled "Use of Cash".  
6 And my question is do you agree that this is the same  
7 prohibition concerning uses of cash as appeared in the draft  
8 of June 1992?

9 A Yes.

10 Q Now, in, in your negotiations with, with Greyhound,  
11 did Raystay ever resist the imposition of these restrictions  
12 that pertain to the new low-power television permits?

13 A Resist may be a -- I don't know if that's the right  
14 word, but there were changes from the January 13th, 1992,  
15 draft in Exhibit 262, Section 8.17, than there is in Exhibit  
16 264, Section 8.17. That's page 20 on 264 and page 12 on 262.  
17 And that is to change the ability to "transfer, sell, lease,  
18 assign, or otherwise dispose of any assets of an affiliate  
19 (other than the assets constituting TV-40 or any of the low-  
20 power television construction permits issued to the borrower  
21 referred to on Schedule 4.15 hereto) to an affiliate."

22 Q Apart from that restriction or that, that provision,  
23 I should say, did, did you negotiate or did you, in the course  
24 of negotiations, resist imposition of the restrictions that  
25 are contained in the various provisions that we looked at

1 concerning use of the loan proceeds, capital expenditures, use  
2 of cash?

3 A Not as it pertained to the construction permits, but  
4 I think we have documented that there was a number of  
5 negotiations that pertained to, to TV-40. And I think you  
6 just -- I just recited the change that I'm aware of that was  
7 made that had to do with construction permits.

8 JUDGE CHACHKIN: Now, what was this change with  
9 respect to the construction permit? What did that allow you  
10 to do? I'm talking about Section 8.17. That's page 20 of  
11 264. What was the change that was made?

12 MR. SANDIFER: It would have allowed Raystay to have  
13 transferred, sell, lease, assign or otherwise dispose of the  
14 low-power construction permits to an affiliate.

15 JUDGE CHACHKIN: And what's an affiliate?

16 MR. SANDIFER: Affiliate is a defined term which is  
17 on page 2 of the agreement, which is any person -- As you see  
18 the defined term here, it includes shareholders, affiliated  
19 companies. You can see the defined term on page 2 and 3 of  
20 this agreement.

21 JUDGE CHACHKIN: But you couldn't sell it to a third  
22 party?

23 MR. SANDIFER: I, I believe we could have sold the  
24 construction permits to a third party without Greyhound's  
25 permission.

1 JUDGE CHACHKIN: Even though it's not an affiliate?  
2 What page did you say the definition of affiliate is?

3 MR. SANDIFER: It's on page 2 and 3 of Exhibit 264.

4 JUDGE CHACHKIN: You're saying under the term --  
5 under the definition of affiliate, you still can sell it to a  
6 third party?

7 MR. SANDIFER: No, I'm not, sir.

8 JUDGE CHACHKIN: Oh, it couldn't be sold to a third  
9 party?

10 MR. SANDIFER: Not under that provision.

11 JUDGE CHACHKIN: But under what provision could it  
12 be sold to a third party?

13 MR. SANDIFER: I would think, and from my reading on  
14 Section 8.7, page 14 of Exhibit 264 and collecting, for  
15 discussion purposes, approximately \$25,000 to sell or transfer  
16 some LPTV construction permits would not make a material  
17 change in our business, since we're talking about a very  
18 significantly larger cable operation which is who the borrower  
19 was. I think we're talking about very insignificant amounts  
20 when we're talking about the sale of these construction  
21 permits that are \$25,000 or so.

22 JUDGE CHACHKIN: So there really -- Really, Section  
23 8.17 is -- in terms of the sale of the cable --the sale of the  
24 low-power permits?

25 MR. SANDIFER: It, it allows us to transfer them to

1 anyone who would be an affiliate, which would be George  
2 Gardner or any related companies, or joint ventures, without  
3 meeting Greyhound's permission to do so.

4 JUDGE CHACHKIN: And without having to make a  
5 showing that it wasn't a material change?

6 MR. SANDIFER: Yes.

7 JUDGE CHACHKIN: Go ahead, Mr. Emmons.

8 BY MR. EMMONS:

9 Q Mr. Sandifer, was, was any -- I take it that Raystay  
10 never did transfer any of the low-power construction permits  
11 to an affiliate, as that term is defined in this agreement?

12 A It did not.

13 Q Now, would you tell us, in light of the restrictions  
14 that are, are contained in the agreement and were -- and that  
15 is also concerned in the earlier drafts -- Well, strike that.  
16 Let me ask you this. During the period while, while Raystay  
17 was negotiating with, with Greyhound over this agreement, did  
18 Raystay give any consideration to going ahead and building the  
19 construction permits on the new low-power stations in, in the  
20 face of the restrictions that Greyhound was indicating they  
21 would -- were going to impose?

22 A Excuse me, would you repeat the question?

23 Q Yes. During the period while you were negotiating  
24 with Greyhound, did Raystay give any consideration to going  
25 ahead and building these new low-power stations anyway, even



1 in the face of the restrictions that Greyhound had indicated  
2 to you that they were going to include in the agreement?

3 A Yes.

4 Q What, what is it that Raystay gave consideration to  
5 in that regard?

6 A Well, I think we're, we're talking about a period  
7 here from second quarter of '91 when we first made contact  
8 with them through -- well over mid-way through '92. During  
9 that period of time, we, we had a number of discussions about  
10 our building desire or our business plans to develop the low-  
11 power construction permits.

12 Q Well, but you knew what Greyhound's position was  
13 with respect to expenditure of funds on noncable matters, did  
14 you not? I mean, you knew that from your discussions with,  
15 with Greyhound, and that's reflected in the note that we were  
16 talking about. Isn't all that true?

17 A Yes.

18 Q And knowing that that was Greyhound's position, did,  
19 did Raystay give consideration to, to making expenditures that  
20 would have violated those, those restrictions that, that  
21 Greyhound was indicating it wanted to impose?

22 MR. SCHAUBLE: Objection.

23 BY MR. EMMONS:

24 Q I can see -- I do not mean to say that those were  
25 legal restrictions upon Raystay at the time, but they were,

1 they were conditions that you knew Greyhound wanted. And what  
2 I'm driving at is whether in the face of, of that Raystay gave  
3 consideration to going ahead and making such expenditures  
4 anyway, before any agreement with Greyhound was filed -- was  
5 signed.

6 MR. SCHAUBLE: Objection. I don't understand the  
7 meaning of the question at this point. As counsel concedes,  
8 at least during the period while the agreement that was  
9 negotiated there was no, you know, there were -- there was a  
10 position of Greyhound, but there was no restrictions per se.

11 MR. EMMONS: Well, Your Honor, it goes to the state  
12 of mind. I mean, Raystay was negotiating for a major amount  
13 of money in the form of a loan from a, a potential lending  
14 source.

15 JUDGE CHACHKIN: Well, I'll overrule the objection,  
16 permit the answer. What the question is, is saying you were  
17 aware, were you not, that if you went ahead and built the CP's  
18 that you would be jeopardizing your loan agreement, would you  
19 not?

20 MR. SANDIFER: I think if we -- the consideration  
21 that we gave was development of the CP's and another venture  
22 or business combination with some outside group or party or  
23 affiliate or --

24 BY MR. EMMONS:

25 Q But not by Raystay itself?

1           A     As I said many times, we looked at all sort of  
2 options. We looked at many plans and proposals and, you know,  
3 this deal was not a deal until it was signed. So we, we could  
4 have -- We were not precluded from entering into other courses  
5 of action and we looked at a lot of options.

6           Q     Did, did your discussion -- Did you have any  
7 discussion with Greyhound during negotiations about the  
8 possibility of transferring the low-power permits to an  
9 affiliate or Raystay and going ahead and building and  
10 operating the low-power stations in that fashion?

11          A     Yes.

12          Q     You did? Okay, because I understood your earlier  
13 testimony to mean that you had almost no discussion  
14 specifically of the permits themselves. But now you're saying  
15 that you did.

16          A     You know, obviously, we went through the loan  
17 agreements, and between June -- I mean January and July there  
18 was a change. So sometime in that period, you know, I had  
19 that discussion with them because I'm the one that asked for  
20 the exclusion. I can't tell you exactly when, but it, you  
21 know, it occurred during this period.

22          Q     Now, did the agreement with Greyhound include  
23 restrictions on expenditures of monies by affiliates of  
24 Raystay?

25          A     There are some restrictions.

1 MR. EMMONS: I guess, Your Honor, at this point we  
2 have to ask counsel whether anything in the documents that  
3 were produced to the parties includes restrictions on, on  
4 affiliates as opposed to restrictions on Raystay itself,  
5 because I don't know that.

6 JUDGE CHACHKIN: Do you have some answer?

7 MR. SANDIFER: Yes, sir. If you'll look at --  
8 Your Honor, on page 15 and 16 of Exhibit 264 there is  
9 discussion of how much activity the company can have between  
10 the Gardner relationship, and we're talking about George  
11 Gardner, his family, and that's certainly since they're the --  
12 that's an affiliate relationship. And certainly we have 8.17  
13 on page 20, which talks about transactions with affiliates. I  
14 think only the portion that pertains to the matters in  
15 question are extracted here, but there were a number of  
16 discussions. But, but other than these things that are listed  
17 here, I know of no other limitations upon affiliates.

18 Certainly, the activities of those companies and  
19 affiliates dealing with Raystay management fees and  
20 remuneration and investments and GH Cable Arizona which is an  
21 affiliate, those are all mentioned here and that's to what I  
22 was referring.

23 BY MR. EMMONS:

24 Q Mr. Sandifer, in your view, is there anything in  
25 this agreement, the, the loan agreement between Raystay and

1 Greyhound, then that would restrict expenditures by  
2 affiliates, as that term is defined, on low-power television  
3 construction and operation?

4 A As long as that affiliate does not use any loan  
5 proceeds or Raystay's cash, I don't see any such limitation.

6 Q And were there any other agreements with Greyhound  
7 or other lenders that restricted the use of -- expenditure of  
8 monies by affiliates of Raystay for low-power television  
9 construction and operation?

10 A No.

11 Q Now, did Raystay ever contact any other financing  
12 sources for the purpose of securing financing to construct and  
13 operate the new low-power television stations?

14 A Yes.

15 Q Who, who did Raystay contact?

16 MR. SCHAUBLE: Objection, Your Honor.

17 MR. EMMONS: Well, this goes again to the question,  
18 Your Honor, of --

19 JUDGE CHACHKIN: Overrule.

20 MR. SANDIFER: Well, certainly the initial type of a  
21 discussion occurred with Mr. Etsell's letter to Brian Sweeney,  
22 which is asking for some assistance in, in funding, financing  
23 of this concept. But as to me personally, we had a number of  
24 contacts with I guess one or two local banks in our area, and  
25 I think a national lending firm in -- named -- I think it's

1 Creistre in Boston.

2 BY MR. EMMONS:

3 Q When did you have those discussions?

4 A Varying times between I guess -- I can't identify  
5 them specifically, but during 1991 and 1992.

6 Q Did you ever receive a -- the commitment from any  
7 such funding source to provide funds to Raystay for  
8 construction and operation of the new low-power stations?

9 A No.

10 Q Were those discussions in connection with TV-40  
11 operation or were they in connection with the, the new  
12 permits?

13 A They were in connection with both, some of both.  
14 But, I mean, the discussions included both.

15 Q And you say you never received a commitment from any  
16 such source?

17 A That's correct.

18 JUDGE CHACHKIN: What money would you use to pay  
19 back these loans?

20 MR. SANDIFER: Cash flow from the eventual developed  
21 stations.

22 JUDGE CHACHKIN: But what if there wasn't any money  
23 available? What collateral could you possibly give -- for  
24 such loans?

25 MR. SANDIFER: Well, I think we're going to have --

1 What I -- What we had discussed was financing the construction  
2 was a pledge of all the equipment, and then the intention was,  
3 as we have said throughout, we'd been exploring options to  
4 develop a viable business plan -- through the marketing  
5 efforts and through the advertising that's going to be drawn  
6 on by the stations, you know, provide cash flow necessary to  
7 amortize the debt.

8 JUDGE CHACHKIN: And banks were willing to provide  
9 the loans on that basis? Did you find any banks willing to  
10 provide loans on, on that basis?

11 MR. SANDIFER: Not without personal guarantees or  
12 some other collateral, certainly.

13 BY MR. EMMONS:

14 Q Did you discuss with George Gardner your inquiries  
15 made to these other financial sources?

16 A I have had such discussions with, with George  
17 Gardner, yes.

18 Q And what's been the substance of those discussions?

19 A The substance of those discussions with George  
20 Gardner was that he desired a viable business plan that was  
21 financeable or he wanted to enter into any business  
22 transaction regarding the LPTV construction permits.

23 Q And he didn't think that he had a viable business  
24 plan, did he, at this point -- at any point while these  
25 permits were held?

1           A     Well, I guess that goes to the definition of a  
2     viable business plan. But we certainly never obtained  
3     financing to support a business plan that we had developed,  
4     but, you know, there were always other resources available.

5           Q     Did you ever present a business plan to, to any of  
6     these financing sources you say you talked to?

7                     MR. SCHAUBLE: Objection. Relevance.

8                     BY MR. EMMONS:

9           Q     A business plan for the low-power television  
10    permits?

11                    MR. SCHAUBLE: Objection. Relevance.

12                    JUDGE CHACHKIN: Overrule.

13                    MR. SANDIFER: My discussions with these lenders  
14    were, were preliminary. I, you know, I had probably exchanged  
15    correspondence, but whether we ever sent them -- and all those  
16    kind of things that had to do with the business plan, not to  
17    my knowledge.

18                    BY MR. EMMONS:

19           Q     Did George Gardner authorize or direct you to see if  
20    you could find financing for the new low-power stations?

21           A     He didn't make that one of my priorities, but, you  
22    know, as I think I said, he wanted them to be part of a viable  
23    business plan.

24           Q     And did you get to the point in your discussion with  
25    any of these lending sources of what collateral, what kind of



1 collateral they might require to make a loan for development  
2 of the new low-power stations?

3 A I think we got through the preliminary stage, of  
4 which they would outline what collateral they would want.  
5 Personal guarantees were always one of those requirements and  
6 George Gardner was reluctant in some cases to provide the  
7 personal guarantee.

8 Q Did he express to you that he was reluctant to  
9 personally guarantee a loan that would be made for development  
10 of the low-power stations?

11 A No.

12 Q Well, what's the basis for your statement that  
13 George Gardner was reluctant to provide personal guarantees?

14 A I know of at least two other cases where there had  
15 been major discussions or whatever that had to do with George  
16 Gardner's willingness to stand personal guarantees, and they  
17 aren't relevant to the low-power construction permits but -- I  
18 don't know --

19 MR. SCHAUBLE: Your Honor --

20 BY MR. EMMONS:

21 Q Well, let me ask you this. From your experience  
22 then with George Gardner and your, your awareness, your  
23 knowledge of his reluctance to give personal guarantees, is it  
24 fair to say that when the lending sources to whom you spoke  
25 mentioned that, among other things, they would want George

1 Gardner's personal guarantee you concluded that there wasn't  
2 any point in pursuing those discussions because you knew that  
3 George Gardner was going to give a guarantee?

4 A I'd say contingent upon acceptance of a viable  
5 business plan George Gardner would not give a personal  
6 guarantee, and that's where we were in this process.

7 Q And, and you understood that George Gardner didn't  
8 think he had a viable business plan at that point?

9 A And I think what we're saying is in terms of a  
10 viable business plan with all components in place, financing  
11 the whole thing, no.

12 Q Well, you didn't think that there was at any point a  
13 viable business plan for the development of these low-power  
14 stations, did you?

15 A Well, I think we're talking about a definitional  
16 issue as to whether we had what is a viable business plan. I  
17 think we had plans that had merit but lacked all the  
18 components and the involvement of, of the whole organization  
19 towards completing this process in some sort of integrated  
20 manner. But I think we had plans that had merit that have  
21 been proposed from the time that I've been employed.

22 Q Well, was it not your view that with respect to the  
23 low-power construction permits that a viable business plan  
24 would require, among other things, cable carriage by the major  
25 cable companies in the area of the low-power stations?

1           A     I think that would be an important component of, of  
2 a new broadcast facility, certainly.

3           Q     And, and did you also not feel that a viable  
4 business plan would require a strong regional advertising  
5 base?

6           A     I believe that it would.

7           Q     And did you not also believe that a viable business  
8 plan would require an acceptable level of program?

9           A     Yes.

10          Q     And did you also not believe that a viable business  
11 plan would require minimal capital costs?

12          A     Yes.

13          Q     Now, is it safe to say that at no point during your  
14 involvement and awareness of this low-power matter, that is to  
15 say the development of low-power construction permits, that,  
16 that those elements were not sufficiently in place to give you  
17 comfort that there was a viable plan?

18          A     Well, I'd like to believe that they were in place  
19 when we entered into agreements with Quality Family Company.

20          Q     Well, specifically, let's say December 1991. Did  
21 you feel that those elements were all in place?

22          A     I personally don't feel that all those elements were  
23 in place in December 1991.

24          Q     And would the same be true in July 1992?

25                JUDGE CHACHKIN: Well, Mr. Sandifer said since

1 summer 1991.

2 MR. EMMONS: Oh, I'm sorry, I missed that. I didn't  
3 hear it.

4 BY MR. EMMONS:

5 Q I didn't hear you say "since". I'm sorry. So you  
6 meant since 19 -- December '91 forward?

7 A Until March of '93 when we --

8 Q Okay. I'm sorry.

9 A -- the permits.

10 Q Now, would you turn to TBF Exhibit 245, please,  
11 which is in Volume III-D? Do you have that?

12 A I, I have Exhibit 245.

13 Q Okay. Would you turn to page 2 of the exhibit?

14 A Okay.

15 Q And do you say about the middle of the page -- This  
16 is the FCC form -- there's a Question 7A? Do you have that?

17 A Yes.

18 Q And it says, "If application is for extension of  
19 construction permit, submit as Exhibit Number 1 reasons why  
20 construction has not been completed." Now, would you turn the  
21 page to page 3 and 4? That's Exhibit 1. This is the document  
22 you have testified you reviewed prior to being -- its being  
23 submitted to George Gardner for signature in December 1991.  
24 And I would like you to tell me, if you can, where in  
25 Exhibit 1 does Raystay explain why construction has not been

1 completed by the deadline?

2 A There's no specific statement that jumps out and  
3 says this is the reason why, although there's generally a  
4 reason stated in several paragraphs of that exhibit.

5 Q Well, in your -- to your understanding -- And you  
6 reviewed this application at the time. To your understanding,  
7 what was the reason why Raystay had not started construction  
8 of the low-power stations by the time this application was  
9 filed with the FCC?

10 A The company -- allocated resources to accomplish all  
11 these tasks prior to expiration date of the construction  
12 permits.

13 Q Why wasn't that reason given in Exhibit 1?

14 A I don't know.

15 Q Why wasn't the FCC told in Exhibit 1 that no funds  
16 had been budgeted by Raystay for construction of these  
17 stations?

18 A Well, Exhibit 1 in this Form FCC 307 was prepared by  
19 David Gardner in conjunction with our FCC counsel, and I guess  
20 I had reason to believe that they supplied the information  
21 required in response to the form.

22 Q Well, do you agree that Exhibit 1 would have given a  
23 different impression if it had disclosed that Raystay had  
24 chosen not to allocate monies in its budget for construction  
25 of these stations?

1 MR. SCHAUBLE: Objection, Your Honor. Different  
2 impression? I don't think that's a proper question.

3 MR. EMMONS: Your Honor, it all goes to state of  
4 mind and whether something is misleading or not misleading.

5 JUDGE CHACHKIN: Well, I guess would it have been a  
6 fair representation of the facts might be a better way of  
7 putting it to the Commission.

8 MR. EMMONS: I'll put it that way.

9 BY MR. EMMONS:

10 Q Mr. Sandifer, would it have been a fairer  
11 representation of the facts if Exhibit 1 had disclosed that  
12 Raystay had chosen not to allocated funds in its budget to  
13 construct these stations?

14 A No.

15 Q It would not have been fairer? It was the case,  
16 wasn't it?

17 A Well, I think, you know, our, our budgeting is, is a  
18 flexible process. And I think you said would it make any  
19 difference if it is budgeted. I, I think people budget things  
20 all the time that they don't expect to accomplish. Just  
21 because, you know, if we have a flexible budgeting plan and we  
22 expect to develop these construction permits when a business  
23 plan manifests itself which can be financed, I don't think  
24 whether, whether we had budgeted would have any impact upon  
25 the FCC -- this, this form.

1 Q Well, is the reason that nothing was budgeted as of  
2 this time that you hadn't developed a viable business plan?

3 A The viable business plan as we just discussed it,  
4 yes.

5 Q And is it correct that the ultimate decision not to  
6 have budgeted any funds up to this point for construction of  
7 these stations was a decision made by George Gardner?

8 A Ultimately, that decision was made by George  
9 Gardner.

10 Q And you've characterized the budget process as a  
11 flexible process, and my question to you is at any time while  
12 Raystay held the low-power construction permits at issue did  
13 Raystay ever amend its budget to include funds to construct  
14 those stations?

15 A Not relative to the construction of permits.

16 (Off the record. Back on the record.)

17 MR. EMMONS: Your Honor, counsel and I, Mr. Schauble  
18 and I have agreed that at this point Mr. Schauble is going to  
19 offer a couple of items into evidence.

20 MR. SCHAUBLE: Okay. Your Honor, this -- these both  
21 relate to TBF Exhibit 264. First of all, after the documents  
22 were produced to Trinity, subsequently, it was discovered that  
23 our office -- that an error was made in that the wrong  
24 signature page to TBF Exhibit -- was attached to the final  
25 loan agreement, TBF Exhibit 264. And in discussions with

1 counsel, we think the best, the best way to proceed is to  
2 identify as a Glendale -- separate Glendale exhibit the, the  
3 correct signature page.

4 JUDGE CHACHKIN: All right, this is 222?

5 MR. SCHAUBLE: Yes, Your Honor. I'd ask at this  
6 time it be marked for identification as Glendale Exhibit 222,  
7 a one-page document with one paragraph of text and signature  
8 lines for Raystay Company and Greyhound Financial Corporation,  
9 and with the page number 75 at the bottom of the page.

10 JUDGE CHACHKIN: The document described is marked  
11 for identification as Glendale Exhibit 222.

12 (Whereupon, the document referred to  
13 as Glendale Exhibit No. 222 was  
14 marked for identification.)

15 MR. SCHAUBLE: And, Your Honor, at this time I move  
16 Glendale Exhibit 222 into evidence.

17 JUDGE CHACHKIN: Any objection?

18 MR. EMMONS: No objection, Your Honor.

19 JUDGE CHACHKIN: Glendale Exhibit 222 is received.  
20 (Whereupon, the document referred to  
21 as Glendale Exhibit No. 222 was  
22 received into evidence.)

23 MR. SCHAUBLE: The other matter, Your Honor, is with  
24 respect to the witness's testimony earlier this afternoon  
25 concerning a waiver provision of the agreement. We have



1 obtained and provided to counsel a copy of the, Your Honor, a  
2 copy of the page of the section of the agreement which we  
3 believe the witness was referring to.

4 JUDGE CHACHKIN: And this is, this is part of the  
5 agreement which was in the final agreement?

6 MR. SCHAUBLE: Yes, Your Honor.

7 JUDGE CHACHKIN: All right. This document, one-page  
8 document, will be marked for identification as Glendale  
9 Exhibit 223.

10 (Whereupon, the document referred to  
11 as Glendale Exhibit No. 223 was  
12 marked for identification.)

13 JUDGE CHACHKIN: Any objection to its receipt?

14 MR. EMMONS: No objection, Your Honor.

15 JUDGE CHACHKIN: Glendale Exhibit 223 is received.

16 (Whereupon, the document referred to  
17 as Glendale Exhibit No. 223 was  
18 received into evidence.)

19 MR. EMMONS: I wonder -- Oh, I'm sorry.

20 JUDGE CHACHKIN: Go ahead.

21 MR. EMMONS: I wonder if I could ask counsel for  
22 Glendale to put a copy of Glendale Exhibit 223 before the  
23 witness.

24 MR. COHEN: I think he has it.

25 BY MR. EMMONS: